Cause Court has no jurisdiction at Palni. In other words, it cannot try, or take cognizance of, any suit founded on a cause of action arising at Palni; but we have seen that, in the present case, the plaintiff founded his suit on a cause of action that arose at Palni. That suit, as founded by plaintiff, was not cognizable by the Small Cause Court, since it has no jurisdiction over Palni, and section 16 of the Act is, therefore, no bar to the suit.

This conclusion, founded on the construction of the Acts, is, we may observe, in accordance with the dictates of public convenience in the present case. The fact that the small cause jurisdiction of the Subordinate Judge's Court of Madura (West), though extended by Government to the Dindigul taluk, has not been extended to the Palni taluk, is, no doubt, due to the fact that the latter is much further than the former from the Court of the Subordinate Judge, and there would be undue hardship in compelling suitors with small claims to go a long journey to Madura instead of the Court close at hand to enforce them. To oblige the plaintiff in the present case to file his suit in Madura rather than in Palni, would be to inflict on him a hardship which the Government desired to guard against. With these remarks we dismiss this revision petition with costs.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Benson.

1896. August 28.

MALLIKARJUNA AND OTHERS (DEFENDANTS), APPELLANTS,

v.

PATHANENI (PLAINTIFF), RESPONDENT.*

Civil Procedure Code, ss. 562, 569, 578—Order of Remand—Irregularity affecting the merits.

Where a District Court reversed the District Munsif's decree and remanded the case for a revised finding on the merits:

Held, that this procedure was *ultra vires* and illegal:

---

* Second Appeal No. 646 of 1895.

MALLIKAR-JUNA v. PATHANENI.

Held further, that as the irregularity might have affected the merits of the case, s. 578, Civil Procedure Code, was inapplicable.

SECOND APPEAL against the decree of H. T. Ross, District Judge of Godavari, in appeal suit No. 120 of 1894, reversing the decree of B. Rajalingam, District Munsif of Amalapuram, in original suit No. 128 of 1893.

This was a suit for the recovery of a dwelling site with past profits Rs. 2 and subsequent profits at Rs. 2 per annum and ground. The plaint alleged that the defendants Nos. 1 and 2 executed a mortgage of the suit property to the plaintiff's uncle Bapirazu in 1860 and gave him possession, that in 1867 the defendants sold the same to Bapirazu and that the lands had been in his possession and in the possession of the plaintiff down to the year 1891 when they were usurped by defendants. The defendants denied the mortgage and sale and pleaded that they had always been in possession.

The District Munsif dismissed the suit holding exhibit B, the mortgage of 1860 not proved and refusing to admit in evidence a certain decree on the ground that it was produced too late.

The District Judge remanded the case for a revised finding with a direction that the decree should be admitted. Thereupon the District Munsif admitted the document and passed a decree in favour of the plaintiff.

On appeal the judgment of the District Court was as follows:—

"Defendant's pleader states he has no instructions and no "objection has been filed by defendants to the Lower Court's "finding.

"On these findings the Lower Court's decree must be reversed "and plaintiff given a decree for the recovery of the suit property "with costs throughout. There was no evidence for plaintiff as to "mesne profits."

The defendants appealed.

Mr. *J. G. Smith* for appellants.

The Lower Appellate Court had no power to remand the case as the suit had not been decided on a preliminary point *Subba Sastri* v. *Balachandra Sastri*(1) and *Kelu Mulacheri Nayar* v. *Chendu*(2). The District Judge ought to have weighed the evidence himself. The effect of the Judge's procedure was to throw on the respondent the onus of supporting the Munsif's original judgment instead

(1) I.L.R., 18 Mad., 421. (2) I.L.R., 19 Mad., 157.

of making the appellant show good cause for revising it. Section 578, Civil Procedure Code, cannot apply, as the appellants have been seriously prejudiced.

Sriramulu Sastriar for respondent.

JUDGMENT.—We are of opinion that the order of remand was *ultra vires* and illegal, since the District Munsif had decided the case on the merits, not on a preliminary point. The proper course was for the District Judge to have himself admitted exhibit B and to have considered its effect along with the other evidence in the case and to have then arrived at findings on the material issues. If further evidence was required, he might have called on the District Munsif to record it and certify it, or he might have himself admitted it, and he might then have considered it also before arriving at a finding on the issues (*Subba Sastri* v. *Baláchandra Sastri*(1)).

We have considered how far the provisions of section 578, Civil Procedure Code, should effect our procedure in this case. If we were satisfied that the District Judge did himself consider the evidence and did himself arrive at findings thereon, we should be inclined to hold that, under section 578, Civil Procedure Code, the order of remand and the call for revised findings was merely an irregularity of procedure not affecting the merits and not, therefore, such as to require or to justify us in now remanding the case.

We, however, observe that in the present case the District Judge does not appear to have brought his mind to bear on the question whether the evidence did or did not justify the findings. He did not even state that he accepted them. He merely observed that no objection was taken to them, and that on those findings the decree of the Lower Court must be reversed. It may, perhaps, be that, if the District Judge had himself considered the evidence, he would have arrived at a different conclusion.

The irregularity was, therefore, one which may perhaps have affected the merits of the case.

This being so, we shall follow the procedure adopted in the authority already referred to, and, setting aside the decree of the District Judge, we remand the suit to him for disposal according to law.

Costs of this appeal will abide and follow the result.

---

(1) I.L.R., 18 Mad., 421.